

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JONATHAN MICHAEL CARNAGHI,

Defendant-Appellant.

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UNPUBLISHED

June 23, 2005

No. 252752

Calhoun Circuit Court

LC No. 03-000752-FH

Before: Owens, P.J., and Cavanagh and Neff, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial conviction for first-degree home invasion, MCL 750.110a(2). Defendant was sentenced to 60 to 240 months in prison. We affirm.

Defendant's sole issue on appeal is that there is insufficient evidence supporting his conviction, and specifically, that there is insufficient evidence supporting his identification by the complainant, David Fyffe, as one of the two men who invaded Fyffe's home. We disagree.

When reviewing a claim of insufficient evidence, this Court reviews the record de novo. *People v Hawkins*, 245 Mich App 439, 457; 628 NW2d 105 (2001). This Court reviews the evidence in a light most favorable to the prosecutor and determines whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999). This Court should not interfere with the jury's role of determining the weight of the evidence and credibility of witnesses, but must draw all reasonable inferences and resolve credibility choices in support of the jury's verdict. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000).

The elements of first-degree home invasion are: (1) a person enters a dwelling without permission or breaks and enters a dwelling; (2) with intent to commit a felony, larceny or assault in the dwelling, or who commits a felony, larceny or assault while entering, present in, or exiting the dwelling; and (3) the person is armed with a dangerous weapon, or another person is present in the dwelling at any time during the intruder's entering, presence in, or exiting. MCL

750.110a(2); *People v Sands*, 261 Mich App 158, 162; 680 NW2d 500 (2004).<sup>1</sup> While the prosecution must prove the elements of the crime beyond a reasonable doubt, it is not obligated to disprove every reasonable theory consistent with innocence. *Nowack, supra* at 400. The prosecution “need only convince the jury ‘in the face of whatever contradictory evidence the defendant may provide.’” *Nowack, supra* at 400, quoting *People v Konrad*, 449 Mich 263, 273 n 6; 536 NW2d 517 (1995).

The factors considered in evaluating a witness’ identification include: (1) any “prior relationship or knowledge”; (2) “opportunity to observe the offense, including length of time, lighting, and proximity to the criminal act”; (3) the witness’ “accuracy of description compared to the defendant’s actual appearance”; and (4) a “previous proper identification . . .” among other factors. *People v Davis*, 241 Mich App 697, 702-703; 617 NW2d 381 (2000). “[D]elays as long as eighteen months after a crime do not necessarily invalidate an eyewitness identification.” *Davis, supra* at 703.

Based on our review of the record, we conclude that there was sufficient evidence to support defendant’s first-degree home invasion conviction. There was strong evidence that defendant was the second person involved in the home invasion. Defendant was identified by complainant Fyffe, in a photographic lineup within a matter of days after the home invasion. Fyffe gave a detailed and accurate description of the suspects on the day of the home invasion, which led to the apprehension of defendant. Fyffe’s description included general characteristics such as height and build, as well as distinguishing features such as the color of the suspect’s hair, and the location of a facial piercing. Finally, Fyffe made an unequivocal in-court identification of defendant as one of the two intruders. When Fyffe confronted the intruders in his home directly, he had a good opportunity to observe them, he struck one of them and asked the other if he “wanted some of that.” Viewing the evidence in a light most favorable to the prosecution, there was sufficient evidence for a rational trier of fact to conclude that defendant was one of the two intruders encountered by Fyffe when Fyffe arrived home the day in question.

Affirmed.

/s/ Donald S. Owens  
/s/ Mark J. Cavanagh  
/s/ Janet T. Neff

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<sup>1</sup> First-degree home invasion is not necessarily completed at the time of entry into a dwelling, “but rather can be completed by commission of the final element of the crime while the person is present in (or leaving) the dwelling.” *People v Shipley*, 256 Mich App 367, 377; 662 NW2d 856 (2003). Here, the presence of Fyffe during part of the time that the strangers were in his home qualifies to make it first-degree home invasion.